



**THE MARYLAND COLLECTION AGENCY  
LICENSING BOARD**  
**ADVISORY NOTICE** 7-09



July 20, 2009

**UNLICENSED CONSUMER LOAN AND  
PROHIBITED "PAYDAY" LOAN COLLECTION ACTIVITY**

**Collection of Loans Made by Unlicensed Lenders Prohibited**

This is a reminder to all Maryland Collection Agency licensees that it is illegal to pursue collection actions against Maryland residents for loans that were made by unlicensed entities, unless exempt under Maryland law.

• **Applicable Collection Agency/Debt Collection Laws**

As a collection agency licensee, pursuant to Business Regulation Article, § 7-308 (a)(3), Annotated Code of Maryland, your license may be suspended or revoked if you "knowingly or negligently violate[] the Maryland Consumer Debt Collection Act."

One of the provisions of that Act prohibits a licensee from attempting to enforce a right with knowledge that the right does not exist. Md. Code Ann., Com. Law ("CL") § 14-202(8).

The Commissioner of Financial Regulation licenses consumer lenders pursuant to the statutory provisions described below.

• **Applicable Consumer Lending Licensing Law**

Pursuant to Financial Institutions Article ("FI"), § 11-204, Annotated Code of Maryland, "[u]nless a person is licensed by the Commissioner, the person may not: (1) [m]ake a loan . . ."

Pursuant to CL § 12-302, a "person may not engage in the business of making loans under this subtitle unless the person is licensed under or is exempt from the licensing requirements of Title 11, Subtitle 2 of the Financial Institutions Article, Annotated Code of Maryland, known as the Maryland Consumer Loan Law – Licensing Provisions."

Martin O'Malley  
Governor  
Anthony G. Brown  
Lt. Governor

Department of Labor, Licensing and Regulation  
Commissioner of Financial Regulation  
500 N. Calvert Street, Suite 402  
Baltimore, Maryland 21202-3651

Thomas E. Perez  
Secretary  
Sarah Bloom Raskin  
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Pursuant to CL § 12-301(c), a "lender" "means a person who makes a loan under [Subtitle 3]."

Pursuant to CL § 12-301(e), a "loan" "means any loan or advance of money or credit made under [Subtitle 3]."

**Collection of Loans Made in Violation of Law Because of Excessive Interest Rate Prohibited**

**BE ADVISED:** It is a violation of Maryland law to collect on loans that exceed permissible interest rate caps. The applicable law on permissible interest rates and the unenforceability of loan agreements that exceed those rates is set forth below.

Pursuant to CL § 12-306, the rates a lender may charge in interest on a loan are specified. Section 12-306(a)(6)(i) provides as follows: "For any loan with an original principal balance of \$2,000 or less, 2.75 percent interest per month on that part of the unpaid balance not more than \$1,000 and 2 percent interest per month on that part of the unpaid principal balance that is more than \$1,000[.]" That section, therefore, permits a lender to charge a maximum interest rate of 33 percent interest on loans up to a \$1,000.

Pursuant to CL § 12-313(a)(1), a lender may not "[d]irectly or indirectly contract for, charge, or receive any interest, discount, fee, fine, commission, charge, brokerage, or other consideration in excess of that permitted by this subtitle."

Pursuant to CL § 12-314(a), a person is prohibited from lending \$6,000 or less "if the person directly or

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- Pursuant to CL § 12-313(a)(1), a lender may not “[d]irectly or indirectly contract for, charge, or receive any interest, discount, fee, fine, commission, charge, brokerage, or other consideration in excess of that permitted by this subtitle.”
- Pursuant to CL § 12-314(a), a person is prohibited from lending \$6,000 or less “if the person directly or indirectly contracts for, charges, or receives a greater rate of interest, charge, discount, or other consideration than that authorized by the laws of this State.” Furthermore, CL §§ 12-314(b)(1) and (2) provide in pertinent part as follows:
  - (1) A loan made in the amount of \$6,000 or less, whether or not the loan is or purports to be made under this subtitle, is unenforceable if a rate of interest, charge, discount or other consideration greater than that authorized by the laws of this State is contracted for by any person unless the excess rate contracted for is the result of a clerical error or mistake and the person corrects the error or mistake before any payment is received under the loan.
  - (2) **A person who is neither a licensee nor exempt from licensing may not receive or retain any principal, interest, or other compensation with respect to any loan that is unenforceable under this subsection.**

This Office strongly encourages all collection agencies doing business in Maryland to review the above statutory provisions with their counsel to assure compliance when collecting loans from Maryland residents.

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2. **A person who is neither a licensee nor exempt from licensing may not receive or retain any principal, interest, or other compensation with respect to any loan that is unenforceable under this subsection.**

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